

**STATE OF RHODE ISLAND
DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES**

PUBLIC NOTICE OF PROPOSED RULE-MAKING

In accordance with Rhode Island General Law (RIGL) 42-35 and 42-72-5, notice is hereby given that the Department of Children, Youth and Families proposes to adopt the following DCYF rule:

LEGAL GUARDIANSHIP AND KINSHIP GUARDIANSHIP ASSISTANCE

This new rule provides procedures to implement the provisions of federal and state law relating to legal guardianship and guardianship assistance. The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, authorizes the federal Guardianship Assistance Program (GAP), which allows states to provide kinship guardianship assistance payments to kin who assume legal guardianship of children for whom they have cared while foster parents. Rhode Island General Law 40-11-12 allows the Family Court to appoint a guardian for a child if the child has been placed in the care, custody and control of DCYF and RIGL 40-11-12.3 allows for the provision of guardianship assistance.

Legal guardianship is an important permanency option for children when neither family reunification nor termination of parental rights and adoption best serve the permanency needs of the child. Guardianship provides the child with a sense of belonging, which is essential to the long-term well-being of that child. Guardianship assistance allows caregivers to receive financial reimbursement and other support services to help with the additional expense of caring for a child and also provides the caregiver the ability to care for the child without child welfare agency intervention.

In the development of this rule, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

This proposed rule is accessible on the R.I. Secretary of State website (<http://www.sec.state.ri.us/ProposedRules/>) and the DCYF website (<http://www.dcyf.ri.gov>) or available in hard copy upon request (401 528-3686 or RI Relay, dial 711). Interested persons should submit data, views or written comments by August 28, 2009 to Dorothy Hultine, Implementation Director for Policy & Programs, Department of Children, Youth and Families, 101 Friendship Street, Providence, RI 02903.

In accordance with RIGL 42-35-3, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

The Department of Children, Youth and Families does not discriminate on the basis of race, color, national origin or handicap in acceptance for or provision of services or employment in its programs or activities.

Patricia Martinez, Director

Legal Guardianship and Kinship Guardianship Assistance

Rhode Island Department of Children, Youth & Families

Policy: 700.0045

Effective Date: _____ Version: 1

The Department utilizes a family centered practice approach in developing an individualized culturally sensitive family plan that addresses the child's health, safety and well-being, which are the paramount concerns in making permanency decisions. Federal and state law and Department policy recognize guardianship as an important permanency option for children when neither family reunification nor termination of parental rights and adoption best serve the permanency needs of the child.

Guardianship provides the caregiver with the legal authority to make decisions on behalf of the child, the ability to care for the child without child welfare agency intervention, the opportunity to provide a safe and stable environment for the child without terminating parental rights and provides a permanency option for older children who do not want to be adopted. Guardianship provides the child with a sense of belonging, which is essential to the long-term well-being of that child.

The Department provides financial support to kinship guardian caregivers who require support and services for the children in their care. Any child who receives a kinship guardianship assistance payment is categorically eligible for Medical Assistance in the state where the child resides. Guardianship assistance allows caregivers to receive financial reimbursement and other support services to help with the additional expense of caring for a child.

For the purposes of this policy, "kin" or "relative" means an individual who is related to the child by blood, marriage or adoption. In addition to relationships by blood or marriage, consideration may also be given to placing a child with an individual who is part of the family support system such as a non-related godparent, caretaker, close family friend, neighbor, clergy or other adult who has a close and caring relationship with the child. Placement with members of the family support system holds many of the same benefits for the child as other kinship placements, particularly pertaining to the decrease in placement trauma and the maintenance of consistency in the child's life.

Federal and state laws have been enacted to guide our practice in the area of kinship guardianship. Guardianship recognizes the tradition in many cultures of caring for related children without changing family relationships. Federal and state statutes and regulations provide that preference should be given to relative caregivers.

- The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (P.L.) 110-351, authorizes the Guardianship Assistance Program (GAP), a new title IV-E plan option for states and tribes to provide kinship guardianship assistance payments to relatives who assume legal guardianship of children for whom they have cared while foster parents. This Act also requires the state to make reasonable efforts to place siblings removed from their home in the same foster care, adoption or guardianship placement, or facilitate visitation or ongoing contacts with those that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings. P.L. 110-351 further requires the Department to negotiate in good faith with any Indian tribal organization that requests to develop an agreement with the state to administer a Title IV-E kinship guardianship, foster care or adoption assistance program for payments and resources for administration, training, and data collection.
- The Adoption and Safe Families Act of 1997 (P.L. 105-89) establishes a preference for the placement of a child with a fit and willing relative and allows states to practice concurrent planning through the identification of a permanent placement option for the child if reunification efforts are not successful. Legal guardianship is defined as "a judicially created relationship between a child and caregiver which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making".

- [The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 \(P.L. 104-193\) requires the state to give preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that child protection standards are met.](#)
- [The Indian Child Welfare Act \(P.L. 95-608\) expresses a strong preference for the placement of Indian children with kin and/or members of the tribe.](#)
- [Rhode Island General Law \(RIGL\) 40-11-12 allows the Family Court to appoint a guardian for a child if the child has been placed in the care, custody and control of DCYF.](#)
- [RIGL 40-11-12.2 recognizes guardianship as a permanency plan for a child in DCYF care.](#)
- [RIGL 40-11-12.3 allows the state to provide guardianship subsidy.](#)
- [RIGL 42-72-8 allows the Department to share confidential information with caretakers.](#)

[If the prospective guardian resides out-of-state, the caretaker must be approved through the ICPC \(refer to **DCYF Policy 700.0060, Interstate Compact on the Placement of Children \(ICPC\)**. A written agreement between the Department and the caregiver outlines the rights and responsibilities of the caregiver, the terms and the amount of the guardianship assistance and any services for which the child is eligible following the legal establishment of guardianship. There is an annual review of the guardianship assistance.](#)

[In the event that it is determined that a legal guardianship is in the best interest of a child who does not meet all criteria for the kinship guardianship assistance program, administrative approval to proceed with legal guardianship may be granted for good cause.](#)

Related Procedure

[Legal Guardianship and Kinship Guardianship Assistance](#)

Related Policies

[Licensing of Foster Care Homes](#)

[Kinship Care](#)

[Criminal Records Checks](#)

[Clearance of Agency Activity](#)

[Interstate Compact on the Placement of Children \(ICPC\)](#)

[Complaints and Hearings](#)

[Adoption Subsidy](#)

Legal Guardianship and Kinship Guardianship Assistance

Procedure from Policy 700.0045: Legal Guardianship and Kinship Guardianship Assistance

- A. The Family Court may grant a petition for guardianship initiated by the Department for a child in the care of DCYF.
 - 1. The petition must contain the written consent of the parent(s) who previously had custody of the child and the Department.
 - 2. The granting of guardianship will terminate DCYF custody and the involvement of the Department with the child and the child's parents, relating to the child.
- B. Kinship Guardians
 - 1. Kinship guardians may be eligible to receive the federal Title IV-E Guardianship Assistance for a child or may choose to receive financial and medical assistance for a child through receipt of TANF (loco parentis) and included benefits through DHS.
 - 2. For the purposes of this policy, "kin" or "relative", in accordance with DCYF Policy 900.0025, Kinship Care, means an individual who is related to the child by blood, marriage or adoption or an individual who is part of the family support system such as a non-related godparent, present or former caretaker, close family friend, neighbor, clergy or other adult who has a close and caring relationship with the child.
- C. The child is eligible for Title IV-E kinship guardianship assistance if:
 - 1. The child has been removed from home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and the child is eligible for Title IV-E foster care maintenance payments while residing for at least six (6) consecutive months in the home of the prospective relative guardian.
 - 2. Being returned home or adopted are not appropriate permanency options for the child.
 - 3. The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.
 - 4. A child who has attained fourteen (14) years of age has been consulted regarding the kinship guardianship arrangement.
 - 5. Siblings
 - a. The child and any sibling of the child may be placed in the same kinship guardianship arrangement if the Department and the relative agree on the appropriateness of the arrangement for the siblings.
 - b. Kinship guardianship assistance payments may be paid on behalf of each sibling placed with that guardian.
 - c. The sibling does not have to meet the eligibility criteria in C. 1-4 above to be eligible for guardianship assistance payments and non-recurring expenses.
- D. Guardianship Assistance
 - 1. The Department provides kinship guardianship assistance payments on behalf of children to grandparents and other kinship caregivers who assume legal guardianship of children they have cared for as foster parents and have committed to care for on a permanent basis.
 - 2. The assistance payment shall not exceed the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home.
 - 3. Any child who receives a kinship guardianship assistance payment is categorically eligible for Medical Assistance in the state where the child resides. (For the purposes of titles XIX and XX, any eligible child for whom there is a kinship guardianship assistance payment being made under section 473(d) is deemed to be a dependent child as defined in 406 of the Act and is deemed to be a recipient of AFDC under part A of title IV of the Act (as in effect 7/16/96) in the state in which such child resides.)

4. Child Care may be funded through DHS, or DCYF until age six (6), in accordance with procedures outlined in **DCYF Policy 700.0090, Adoption Subsidy, Procedure: Types of Adoption Assistance/Subsidy.**

E. Guardianship Assistance Agreements

1. The Department will negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian.
2. The Department will provide the prospective relative guardian with a copy of the agreement.
3. The assistance agreement must specify, at a minimum:
 - a. The amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;
 - b. The additional services and assistance that the child and relative guardian will be eligible for under the agreement;
 - c. The procedure by which the relative guardian may apply for additional services as needed;
 - d. That the state will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$2000.; and
 - e. That the agreement shall remain in effect without regard to the state residency of the relative guardian.

F. Service Plan

1. If the Department and the Family Court have determined that reunification and adoption are not viable permanency options and that it is in the best interest of the child to be placed with a kinship guardian, the DCYF Service Plan permanency goal is changed to guardianship.
2. The Service Plan for a child who will receive kinship guardian assistance payments will include a description of:
 - a. The steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
 - b. The reasons for any separation of siblings during placement;
 - c. The reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interests;
 - d. The ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;
 - e. The efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons; and
 - f. The efforts made by the state agency to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made.

- G. The Department's foster care and adoption licensing process and standards are utilized to approve guardianship homes. In accordance with **DCYF Policy 900.0040, Criminal Records Checks** and **DCYF Policy 700.0105, Clearance of Agency Activity**, criminal records checks, including fingerprint-based checks of national crime information databases and child abuse and neglect registry checks are completed on any kinship guardian and any other adult living in the home before the relative guardian may receive kinship guardianship assistance payments on behalf of the child.

H. Sharing Information with Guardian

1. Caretakers have a right to receive personally identifiable health care information (PHI) about a child who is placed in their home as a matter of state and federal law.

2. The Department provides to caretaker non-identifying health care information about the child's family, which is contained within DCYF files.
 3. When a prospective guardian is identified for a child, the primary worker provides guardian with a full presentation of the child. The presentation process provides an opportunity for the Department to share with the guardian relevant information about the child that is reasonably available regarding medical, psychological, educational or other services that have been provided to the child. Relevant non-identifying information concerning the medical, psychological and social history of the child's birth parents and siblings must also be shared.
- I. Requesting Guardianship and Kinship Guardianship Assistance
1. Primary service worker and supervisor confer and agree that the child meets eligibility criteria.
 2. Primary service worker and supervisor confer with Regional Director/division administrator to obtain approval to proceed with guardianship.
 3. Primary service worker prepares a Summary of Facts to Support Request for Guardianship.
 4. If prospective guardian is requesting guardianship assistance, worker completes the Guardianship Assistance Agreement (DCYF #031) and submits to Permanency Subsidy Coordinator for review, negotiation with prospective guardian and approval.
 5. Permanency Subsidy Coordinator returns the approved DCYF # 031 to worker.
 6. Primary service worker reviews with prospective guardian and guardian signs the DCYF # 031.
 7. Worker submits DCYF # 031 and Summary of Facts to Support Request for Guardianship to supervisor and Regional Director/division administrator for approval.
 8. If request has been approved at these levels, worker schedules a legal consult and guardianship petition is prepared and signed. The Deputy Director or designee signs the petition for the Department. This procedure must be completed before guardianship is awarded in Family Court.
 9. When the guardianship petition is granted by the Family Court, worker does the following:
 - a. Includes copies of the DCYF # 031, Summary of Facts to Support Request for Guardianship and the guardianship Decree in the case record.
 - b. Provides a copy of the DCYF # 031 to the guardian.
 - c. Forwards the original DCYF # 031 and a copy of the Guardianship Decree to the Permanency Services Unit for establishment of the guardianship record.
 - d. Documents changes in RICHIST and the case is closed if there are no other children active with the Department.
 10. The RICHIST case is assigned to the Permanency Subsidy Coordinator as secondary if there are other active children with the Department.
 11. If the guardianship child is the only active participant, the case is assigned as primary to the Permanency Subsidy Coordinator.
- J. Recertification for the guardianship to confirm that there have been no changes in the family's situation and that the child is still residing with the guardian will be sent to the guardian annually by the Permanency/Adoption Services Unit.
- K. Modification and Revocation of Guardianship
1. The court may revoke a guardianship if the court finds after hearing on a motion for revocation that continuation of the guardianship is not in the best interests of the child.
 2. Notice of any hearing on such motion shall be provided by the moving party to the Department of Children, Youth and Families, the court appointed special advocate, the parent or guardian and any and all other interested parties.
- L. If kinship guardianship assistance is denied in total or in part or if the prospective kinship guardian disagrees with the amount determined to be appropriate and if further negotiation is not an alternative, the prospective kinship guardian may request a hearing in accordance with **DCYF Policy 100.0055, Complaints and Hearings.**